

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA	:	
	:	
	:	CRIMINAL INDICTMENT
v.	:	
	:	NO. 1:09-CR-490
THE PUBLIC WAREHOUSING COMPANY	:	
K.S.C.,	:	
a/k/a	:	
Agility,	:	
Defendant.	:	

Government's Response to Notice of Special Appearance and  
Motion for Continuance of Initial Appearance

Comes now the United States of America, by and through counsel, F. Gentry Shelnutt, Acting United States Attorney, Barbara E. Nelan, Assistant United States Attorney, and Richard E. Reed, Special Assistant United States Attorney, and files this response to Defendant's Notice and Motion for Continuance of the arraignment and initial appearance presently set for Friday, November 20, 2009 at 9:30AM. (Doc. 9).

PWC has known about the impending indictment at least since October 23, 2009. On that day, in an e-mail communication, counsel for the United States asked defendant Public Warehousing Company's (PWC) counsel to "identify a PWC representative who will accept a summons with respect to an initial appearance /arraignment." On October 30, PWC's counsel responded in relevant part that: "I spoke with Sam McCahon [PWC internal counsel] regarding the availability of someone to receive a summons on behalf of PWC. He noted that

PWC's senior staff travels a great deal and often on short notice, so it is it [sic] not always predictable as to who will be where at a particular time. He did note that if you can provide perhaps as little as a week's notice, he should be able to specify someone for your purposes, if not himself." PWC representatives have not identified any person for the purpose of accepting service to date.

After the indictment was unsealed, early Monday morning, November 16, 2009, federal agents for the government went to the office of PWC's counsel in Atlanta, Georgia.<sup>1</sup> While the summons and indictment were left at Atlanta counsel's location, the agents were told that counsel would not accept service on behalf of PWC. Simultaneously, federal agents for the government went to the office of CT Corporation in Wilmington, Delaware who is the registered agent of record with the Delaware Secretary of State for Agility Defense & Government Services, Inc. and its successor corporation Agility DGS Holding, Inc.<sup>2</sup> CT Corporation did accept service. Also on Monday morning, federal agents went to the Alexandria, Virginia, office of retired General Daniel G. Mongeon who is the Director, Chief Executive Officer, and President of Agility Defense & Government Services Business Group<sup>3</sup>. The agents

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<sup>1</sup> Counsel for the United States had previously been told to deal with Mr. Deane on all matters concerning PWC.

<sup>2</sup> CT Corporation is the registered agent for Multiple Agility entities.

<sup>3</sup> PWC is the parent company for the Agility group of companies. At the location of Mr. Mongeon's office the signage indicated Agility is the new name for PWC Logistics.

stated that they were there to serve documents on PWC. In response, Mr. Mongeon's Executive Assistant appeared and accepted service.

Counsel for the United States has asked PWC to verify service of the summons in this case, PWC has thus far refused to do so. While the United States does not object to a day or two continuance to facilitate a representative of PWC appearing on behalf of PWC<sup>4</sup>, it is imperative that the Defendant apprise the Court and the United States whether PWC will acknowledge service in this criminal case. Further, PWC's present requested extension to December 2, 2009, places the appearance when the United States lead counsel is on leave<sup>5</sup>.

Respectfully Submitted,

F. GENTRY SHELNUTT  
ACTING UNITED STATES ATTORNEY

BARBARA E. NELAN  
ASSISTANT U.S. ATTORNEY  
Georgia Bar No. 537537

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<sup>4</sup> As noted above, PWC previously indicated it would take them only a week to have a representative appear to accept service.

<sup>5</sup> Notice was filed for leave for December 2-9. Counsel has scheduled a long standing vacation out of the United States, and filed a notice of leave in every case currently in the Northern District of Georgia in which Counsel is of record and will also file in the present case as soon as assignment is made to a Magistrate and District Court judge. Counsel is available for any date between now and December 1.

RICHARD E. REED  
SPECIAL ASSISTANT U.S. ATTORNEY  
Georgia Bar No. 597745

600 United States Courthouse  
75 Spring Street, S. W.  
Atlanta, Georgia 30335  
PH: 404-581-6000  
FAX: 404-581-6181

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served upon the below listed person a copy of the foregoing document by Electronic Filing (ECF):

Richard H. Deane, Jr.  
Jones Day  
1420 Peachtree Street, N.E.  
Suite 800  
Atlanta, GA 30309-3053

This 19<sup>th</sup> day of November, 2009.

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/s/ BARBARA E. NELAN  
ASSISTANT U.S. ATTORNEY

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/s/ RICHARD E. REED  
SPECIAL ASSISTANT U.S. ATTORNEY